

REMARKS

Claims 1-11 are pending in the current application and claims 12-19 have been withdrawn. Claim 11 has been canceled. Reconsideration and withdrawal of the rejections are respectfully requested in light of the following remarks.

Claims 1-3 have been rejected under 35 § 102(b) as being anticipated by U.S. Patent No. 4,518,203 to White (hereinafter referred to as "*White*"). The Examiner relies on *White* as disclosing a substantially horizontal seat including at least two seating portions (14, 16), a back extending substantially vertically from the seat, at least two pivotal members (12, 18) and a support extending from the underside of the seat.

White discloses a convertible cushion that accommodates only one person at a time in either a laying down position or a seated position. The headrest 12 and backrest 18 that the Examiner relies on as the pivotal members pivot to form a longer seating portion or a longer headrest, rather than to accommodate two persons of different height. Moreover, *White* fails to disclose a back, a seat *and* at least two pivoting members. *White* merely discloses pivoting cushions and no seat or back. Finally, *White* further fails to disclose a support. Since the invention of *White* is a convertible cushion without a seat or a back, it must be placed on a surface for support, rather than having its own support.

On the other hand, the present invention, as recited in independent claim 1 teaches a bench for accommodating at least two persons, having a seat, a back, pivotal members and a support. The number of seating portions and pivotal members determines how many people the bench can accommodate. Each pivotal member corresponds to a seating portion of the seat. The pivotal member pivots between a position adjacent to the back or adjacent to the seat. Depending on the position of the pivotal member, the pivotal member may act as a seat or a back. For example, Fig. 1 of the present invention illustrates pivotal members 20, 22. In Fig. 1, pivotal member 20 is in the substantially vertical position, exposing the seat 24 while pivotal member 22 is in the substantially horizontal position exposing the back 18. Therefore, two people may be seated on the bench. A first taller person may be comfortably seated on the seat 24, with the pivotal member 20 in the vertical position, therefore acting as a back support. A second shorter person, such as a child, may be seated on the pivotal member 22 with the back 18 acting as the back rest. Thus, the bench according to claim 1, is able to accommodate two persons at the same time with the pivotal members acting as either a back in the vertical position

or a seat in the horizontal position. As recited in claim 1, the bench must therefore, also include a seat and a back in addition to the pivotal members, so that if the pivotal member is in the horizontal position, there is a back rest, or if a pivotal member is in the vertical position, there is a seat.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." M.P.E.P. § 2131 citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Claim 1 cannot be anticipated by *White*, because *White* fails to disclose each element of claim 1. Specifically, *White* fails to teach or suggest a back, a seat, pivotal members and a support for the seat. Rather, as discussed above, *White* teaches a convertible cushion. Moreover, the cushion of *White*, cannot be used to accommodate two people, but only a single person, either laying down or in a seated position. Therefore, it is respectfully submitted that claim 1 is allowable over *White* and that the 35 U.S.C. §102(b) rejection should be withdrawn with respect to claim 1. Moreover, claims 2 and 3 depend directly or indirectly from claim 1 and therefore incorporate each of the allowable features of claim 1, in addition to other novel features. Therefore, it is respectfully submitted that claims 2 and 3 are allowable and that the 35 U.S.C. §102(b) rejection should be withdrawn with respect to these claims as well.

Claims 4-7 and 9-10 have been rejected under 35 U.S.C. §103(a) as being unpatentable over *White* in view of U.S. Patent No. 6,145,931 to Subotic (hereinafter referred to as "*Subotic*"). Claims 4-7 and 9-10 depend directly or indirectly from independent claim 1, which is believed to be allowable for the reasons set forth above. Therefore, claims 4-7 and 9-10 include each of the allowable features of claim 1, in addition to other novel features. Thus, since claims 4-7 and 9-10 include allowable features, the claims are believed to be allowable over the prior art. Therefore, it is respectfully submitted that the 35 U.S.C. 103(a) rejection should be withdrawn with respect to these claims.

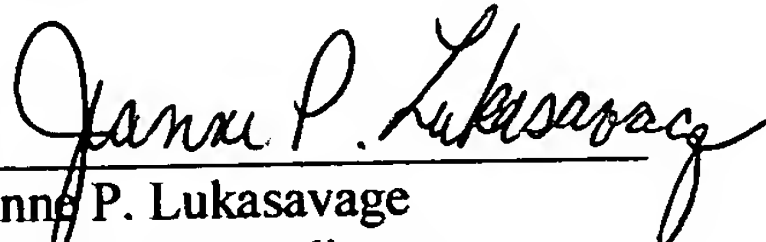
As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone applicants' attorney at (973)236-1155 in order to overcome any additional objections which she might have.

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Respectfully submitted,

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